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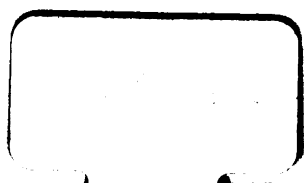
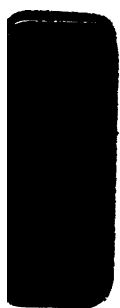
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JOHN LOWELL.



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Proceedings of the Bench and Bar
OF THE
CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF MASSACHUSETTS,

UPON THE DECEASE OF

HON. JOHN LOWELL.



BOSTON:

1897

MEETING OF THE BAR,

JUNE 19, 1897.

ON Saturday, June 19, 1897, the members of the Bench and Bar of the United States Circuit Court gathered in the Court Room at the Federal Building, on Devonshire Street, Boston, to pay their tribute of respect to the memory of their departed professional colleague and brother, Hon. JOHN LOWELL, and to pass appropriate resolutions on the subject. The proceedings were impressive in character, and the attendance was both large and representative, the judges and lawyers present representing the New England circuit and district courts of the First Circuit.

The meeting of the bar was held prior to the coming in of the Court, such meeting having been called by adjournment from a previous gathering, at which a committee had been appointed to prepare resolutions on the death of Judge LOWELL. The lawyers present included Charles A. Welch, Charles Levi Woodbury, Alexander S. Wheeler, Hon. George S. Hale, Causten Browne, Thornton K. Lothrop, Hon. William W. Crapo, James C. Davis, John C. Ropes, Lewis S. Dabney, Solomon Lincoln, Henry M. Rogers, George W. Morse, Frederic Dodge, Charles P. Greenough, Frederick P. Fish, Melville M. Weston, Henry W. Putnam, Eugene P. Carver, James E. Cotter, Edward

E. Blodgett, Richard M. Saltonstall, Henry Wheeler, Judges Hammond and Bishop, of the Superior Court, John G. Stetson, Clerk of the United States Circuit Court of Appeals, United States Commissioner Francis S. Fiske, United States Attorney Boyd B. Jones, Assistant Attorneys John H. Casey and Frederick P. Cabot, John Lowell, Jr., Ex-Judge William L. Foster, of Concord, N. H., Ex-Judge Joseph W. Symonds, of Portland, Me., Arnold Green, of Providence, R. I., and many other legal gentlemen from Massachusetts and other States.

The proceedings began shortly after 11.30 A. M. The meeting was called to order by United States Attorney Jones, who said:

GENTLEMEN OF THE BAR: It is pre-eminently fitting, on an occasion of this kind, that some member of the bar of long standing should be called upon to preside over this gathering, and I therefore suggest that a motion to that effect be made.

A motion was then offered, seconded, and unanimously carried that Mr. Causten Browne preside over the meeting. Mr. Browne took his seat as chairman of the meeting, and Mr. Frederic Dodge was requested to act as secretary.

PRESIDENT BROWNE next said:

BRETHREN: It will now be necessary to state to you the object of this meeting. As a matter of form it is called to receive and act upon the report of the committee appointed a day or two after Judge Lowell's death to prepare resolu-

tions and submit them to an adjourned meeting of the bar. The resolutions have been drawn by the hand of an old friend of the deceased, our brother, Mr. Thornton K. Lothrop, and I shall presently ask him to make a report on behalf of the committee and to read those resolutions. I have said what the meeting is as a matter of form, but it is far beyond that. On the occasion of such an event as the death of Judge Lowell, that event seemed to the committee to justify our calling upon the bar of the other States in this Circuit to come and join us in the memorial we have to make. There are accordingly present four or five gentlemen not belonging to our own immediate bar who are present here to-day, who are glad to be with us, and who will make a worthy contribution to the work we have in hand. I now request Mr. Lothrop to read the resolutions.

MR. THORNTON K. LOTHROP, read the resolutions as follows:

The members of the bar of the United States Circuit Court for the First Circuit, desirous of placing upon record an expression of their appreciation of the eminent qualities of Hon. John Lowell, for more than nineteen years a federal judge of this circuit, hereby

Resolve, That in the death of Judge Lowell, the court, the bar, and the community have sustained no common loss. As a magistrate and a lawyer he was conspicuous alike for the modesty and simplicity of his character and bearing; for his mental and moral integrity; for the solidity and variety of his legal learning; for his quick apprehension, his clear perceptions, and his strong common sense; for his innate and inexorable love of justice, and his repugnance to

all wrong and oppression, or to anything that savored of sharp practice or double dealing. On the bench his uniform courtesy relieved a young practitioner of all embarrassment and aided him in the proper presentation of his case; while the oldest and ablest counsel fully recognized and respected his eminent judicial abilities and deserved distinction.

Possessing in a very high degree a natural aptitude and taste for the investigation and determination of legal problems, each year of his judicial service found him better fitted for his work and holding a higher place in the public respect and confidence. Thoroughly independent in character, his sole endeavor as a judge was to discharge all his duty with scrupulous fidelity, to hear with attention, to examine and weigh with absolute fairness the cases submitted to him, and to decide them correctly, employing and interpreting the technical rules of the law to aid, not to defeat, the ends of justice. His opinions were clear, strong, terse, and to the point, and were not infrequently illumined by flashes of keen, but always kindly, wit.

As a practising lawyer, Judge Lowell manifested the same qualities which distinguished him on the bench. From his learning and sound judgment he was much sought for as an arbitrator and referee. He was a safe and trusted adviser. He gave to the preparation and argument of his causes the best that was in him, and was to the end of his life a diligent student of the law. He had a great kindness for the younger members of the bar, took a warm interest in their work, and his learning and experience were always at

their service. The practice of the law was to him a calling of honor and dignity. He adhered to the ancient traditions and highest standard of professional ethics, and believed in the common law as an admirable system for securing the largest possible measure of justice in the disputes which must arise in the complex business and relations of life.

He was not only an able lawyer, an upright and learned judge, he was a patriotic citizen, interested in public affairs, zealous for the public good. He was an excellent neighbor, a delightful companion, a warm and faithful friend; and while his character and ability gained him the respect, the kindliness of his nature and his uniform thoughtfulness and consideration for others won for him the affection of all who knew him.

PRESIDENT BROWNE: The resolutions are now before the meeting, and the meeting will be glad to hear what the brethren desire to say in their support, before the vote is taken.

REMARKS OF HON. GEORGE S. HALE.

MR. CHAIRMAN AND BRETHREN OF THE BAR:

Lord Chief Justice Coleridge said of Mr. Justice Archibald of the Queen's Bench and Common Pleas, of whose very existence, so fleeting is the memory of honored names, some of us may need to be reminded, "No one was fitter than he to be taken from the great task of judging others to be judged himself." Before this Bench, which their predecessor, taken from this great task, in which they follow him, so much adorned, I could not ask a better text for the words of professional and personal praise which I am allowed to offer to his memory and for the approval of your just judgment.

Judge Lowell was appointed Judge of the District Court for Massachusetts, March 11, 1865, and Circuit Justice of the First Circuit, December 18, 1879. He resigned in May, 1884, thus holding judicial office about nineteen years.

He was a lawyer by descent and inheritance. His great-grandfather, of the same name, was a judge in 1782 of the court to which appeals lay from the Court of Admiralty, and held the offices of District Judge of the United States under an appointment by George Washington, and of Chief Justice of the Circuit Court under an appointment by John Adams. To the consideration of the court, his brethren on the bench as well as at the bar, I may wisely leave the more authoritative description of his widely recognized merits and success in the performance of his great office. But I call all those around me as witnesses to my declaration of his deserving, whether they looked up to him from the bar, appealed to him

for counsel, or voluntarily constituted him the arbiter of their rights. And if I appropriate without special acknowledgment the words and thoughts of others, you will be pleased that there are many to contribute to his praise.

He was not only successful in the more serious part of his duties on the bench but did not consider its dignity diminished by his readiness to receive and consider suggestions and inquiries from the humblest suitors on any matter in which he could aid them without interfering with actual controversies, so that one of his friends compared him to an eastern Cadi sitting in the gate of the city, a comparison which seemed not unwelcome to him. At the same time he would repulse a too importunate visitor in such a gentle manner that the intruder hardly perceived the rebuff.

His strong sense of justice made him thoroughly independent of unsound precedents. When his attention was called to a decision of the highest Court the soundness of which was doubted, he at once said it was "nonsense" with an epithet. "But how will you deal with it?" he was asked. "Oh, when I come to it there will be a distinction." His knowledge of precedents, however, was equal to his independence. When two members of the bar came to him to discuss a point in the law of bankruptcy, he, without referring to the books, recapitulated the course of decisions from the time of the Georges, and showed conclusively the error which had been made. And as they left him, one commented to the other upon his lucid development of the subject, and the other added, "Yes, and he makes you feel so like a — fool that you did not see it before."

This is not the time to review at length the evidences he has left us of his capacity to create and apply the rules of law in the varied circumstances under which the wide jurisdiction he exercised presented them, evidences which his modest hesitation left too few in number for his successors

It devolved upon him to lay down rules for the title to whales in the Sea of Okhotsk; to value Leviathan and "part him among the merchants"; awarding to the sign of actual capture floating on far-off northern seas the right which "his skin" filled "with barbed irons or his head with fish spears might not prove"; to apportion prize money among the ships of our great Captain Farragut in the Bay of Mobile; to adjudicate upon the legality of the sale of a Confederate ship of war after her successful cruise against our commerce.

His decisions were largely occupied with the exposition of the law of bankruptcy, and furnish a body of authorities of great variety and very great value. "He loved justice and hated iniquity."

"As great a lawyer as he was", — I am adopting the words which Bishop Gilbert Burnett wrote of Sir Matthew Hale, — "As great a lawyer as he was, he would never suffer the strictness of law to prevail against conscience; as great a chancellor as he was, he would make use of all the niceties and subtilities in law when it tended to support right and equity. But nothing was more admirable in him than his patience."

He was never overruled on a question of evidence or practice. A friend says to me, "Upon mooted legal points upon which the Courts have divided and perhaps must divide, his opinions have been considered as entitled to respect, and as models of legal discussion by those who differed from him in opinion." While he "illuminated common and ordinary legal questions with new force and meaning . . . and was a great man in the force of his legal intuitions."

Of the home he made happy I need not hesitate to speak here, and the modest simplicity with which he would have spoken may be ours.

“Contented toil and hospitable care,
And kind connubial tenderness were there.
And piety with wishes fixed above,
And steady loyalty and faithful love.”

I might speak of children whom he loved, joys which brightened and cares which darkened his life, but did not prevent him from looking up to the Great Source of Light; of prosperity and honors, of wealth liberally used, of friends attracted to him and welcomed by him, and wit and humor which enlivened but never stung.

In the words of a valued friend, whose language I delight to think that he would be — that he is — glad to have me use on this occasion, —

“Cardinal Newman’s characterization of a gentleman —

‘He may be right or wrong in his opinion, but he is too clear-headed to be unjust; he is as simple as he is forcible, and as brief as he is decisive. Nowhere shall we find greater candor, consideration, indulgence; he throws himself into the minds of his opponents, he accounts for their mistakes,’

brought John Lowell before me vividly, as I have often heard him give just this evidence of an amazing fairmindedness and a perfectly magnanimous temper. To me, one of the rarest graces of his most gracious spirit was an unfailing tenderness towards the unsuccessful; this was only equalled by his scorn for the self-seeking spirit by which worldly success is sometimes secured. He was considered a silent man, but he liked to talk, and I have never known a more inspiring and delightful talker. He needed only a quiet hour, a small, sympathetic audience, and a good, large subject. Then the wealth of his beautiful mind was given to his friends without stint or measure, as he walked up and down the room. Everyone knows how learned he was and how accurate, how almost infallible was his rich memory, but not all are acquainted with the exquisite kind humor which took the exact measure of every subject and which illuminated his talk with warmth and gayety. There was no limit to his generous sympathy. His beautiful grounds at Chestnut Hill, with the pond, the woods, and the wild flowers, were almost common property. I remember an occasion when his attention was called to some abuse of this generosity,

when he replied, with characteristic gentleness and emphasis, 'No man has a right to shut people out of so large a piece of God's earth as this, which I own here, and the truth is, I *like* to have them come.' When it is remembered that John Lowell was one of the most sensitive of men, both in soul and body, the gallant cheerfulness with which he accepted suffering, blindness, and the sure approach of death, was a supreme expression of his undying generosity to all those who loved him. . . . It was so that he kept hearts from breaking all around him, to the end. I am sure that it is the duty and happy privilege of us all to make the nobility and sweetness of such a spirit as his vividly known, for it is certainly true that he was, as Mr. Brown said of him, standing by his bier, 'Our strong witness to the reality of the truths of the Spirit.'"

And thus, as old Thomas Fuller wrote, "We leave our good judge", as we began, "to receive a just reward of his integrity from the Judge of judges at the Great Assize of the world."

REMARKS OF HON. WILLIAM W. CRAPO.

During the earlier years of Judge Lowell's occupancy of the bench, my duties called me with frequency into the Admiralty Court. Peleg Sprague had presided over the Court for a quarter of a century with conspicuous and masterly ability, and had earned distinction as one of the foremost jurists of his time. When, upon his retirement, John Lowell was named as his successor, there were those, living outside of Boston, and without personal knowledge, who had misgivings whether the high standing of the Federal Court could be maintained. But apprehension and doubt vanished, as it became evident that a learned, vigorous, clear-headed judge was on the bench. His usefulness and success exceeded public estimation at the time of his appointment, and his reputation never suffered from comparison with his distinguished predecessor.

It is true there was dissimilarity. The prompt, incisive, peremptory, sometimes impatient, rulings of Judge Sprague, which denied argument and silenced remonstrance when deemed irrelevant or frivolous, contrasted with the quiet, thoughtful, patient hearings accorded by Judge Lowell. There was on his part a modest distrust of ability, but with it there was a manifest anxiety to see where the right lay. He extended to practitioners unfailing courtesy and a gracious urbanity, but with judicial dignity he was always in absolute control of the court room.

He had a natural, perhaps I may say an inherited, instinct for the law. He had the faculty to recognize a distinction

and to detect a fallacy. He had the power to analyze and marshal the evidence, and to discern the controlling elements of a case. In the discharge of his judicial duties he exhibited rare judgment and great clearness of statement. He adhered with steadfastness to the fundamental principles of right and justice which lie at the basis of the law.

He had an unclouded sense of duty. He was morally and intellectually conscientious. Neither through favor nor fear could he lean to the one side or the other.

To integrity and fidelity he joined untiring industry, without which the highest talents cannot gain a full reward. He shrank from no labor, he avoided no investigation, he omitted no research, but gave to every task circumspection and care. His thoroughly reasoned and carefully written judgments attest the able manner in which he executed his high commission. His official life was marked with wisdom and discretion.

After his retirement from the bench he became known as the wise counsellor. His intellectual strength and good judgment, and habits of careful preparation, when he returned to the bar, were re-inforced with a ripe experience, and these secured for him the highest professional rank.

It is a long time since I appeared in court before him, but in the social intercourse of more recent years I found that the same personal traits which had endeared him to the profession still moved and guided him and made him one of the most attractive and delightful of men, full of the cheer and sympathy of a large nature and shedding warmth and gladness like the sunshine.

It was a pleasure to have known him and it is a pleasure to remember him.

REMARKS OF MR. ALEXANDER S. WHEELER.

MR. CHAIRMAN AND BRETHREN :

Judge Lowell was a man of whom we can both think and speak without any reserve and with entire satisfaction.

In considering his life and character, there is nothing to explain, to excuse or conceal, nothing which one would wish to have forgotten. I am aware that this is rare praise, but after more than fifty years' acquaintance, I believe it to be just.

Judge Lowell came of an honorable lineage, a family the members of which for many generations have been eminent in public service and for private virtue, and he had the felicity to add honor to a name already distinguished.

Following the example of many of his family before him, he selected the law as his profession and bestowed that diligence in preparation which is essential to a success such as alone would satisfy him. His career at the bar before his appointment to the bench was quiet, but his worth was recognized by those who were near to him. He did not possess the brilliant qualities which at once bring the lawyer to the notice of the public at large. He was a student always, and strove for the mastery of the principles of jurisprudence. His brethren came early to know his capacity for the highest service, and it was to their satisfaction that he was appointed judge of the United States District Court for this district. Here, and subsequently, as judge of the Circuit Court, he labored for many years, and did the substantial work of his life.

In these high positions he showed his strength, his legal learning, his keenness of intellect, and that love of right which gave him a reputation not confined to his own circuit, but throughout the country.

He had the power of going to the crucial points of a case, no matter what might be the complexity of the facts. He saw the bearing of all the evidence, however conflicting, and giving due weight to all, made up his mind as to what were the actual facts, what was proven and what was not proven. Having ascertained the facts, it was no difficult task for him to determine what ought to be done, what justice required. A sense of justice dominated his whole judicial action, and he ever sought to do justice. He did not disregard the rules as formulated in the books and the decisions. He studied these with care, but also with discrimination, seeking the spirit through the letter, and not controlled in his search by subservience to the letter.

He had both intellectual and moral courage. He grappled with the problems presented and would not let go his hold until he had reached a conclusion which satisfied his judgment, and that judgment when formed was abiding.

We say that as matter of course a judge should be a man of moral integrity. Judge Lowell had that rarer gift, mental integrity. He had a sound, healthy mind, alert to detect any fallacy however specious, and any flaw in argument, however plausible it might be. He was a patient listener, and we always felt sure that full consideration would be given to whatever we had to present. He was a man of the kindest heart. Counsel, young or old, had never to fear any harshness on his part.

The geniality of his temper was always manifest. He had a fund of humor that never failed, and on the bench as elsewhere, it added a charm to all that he said and did.

Judge Lowell's judicial functions by no means ceased when

he retired from the bench. Such was the confidence in his judgment that his services were constantly sought as arbitrator in important cases, and he heard and decided almost as many causes in his quiet office in Pemberton Square as when sitting on the bench.

In this court room we commemorate a lawyer and judge who not only had our respect but won our affection and is now to us a tender memory.

Not only by members of the legal profession, but by the whole community, the name of Judge Lowell will be cherished and honored.

REMARKS OF MR. JOHN C. ROPES.

I very well remember my acquaintance with Judge Lowell, when I was Assistant District Attorney in the old Court House under Mr. George S. Hillard, from 1869 to 1871. In that position I had charge of the customs and internal revenue cases on the civil, not on the criminal, side. These cases turned chiefly on the interpretation of the statutes. In a great many, perhaps in the majority of these cases, the facts were in favor of the Government but the condition of the other party very often appeared to be unfortunate in the extreme. I soon found that Judge Lowell would take up the whole case, the law and the facts together, and would somehow decide it as he thought was right. Eminent as he was as a lawyer, both as practitioner and judge, he loved justice more than he did law. He considered the law of the case he had to decide, not only in its legal bearing, but in its relation to the parties, and as a rule, he succeeded in making his decision conform to his own idea of the rights of the different parties concerned in the case. The salient characteristic in his mental and moral nature was his exceeding love of justice, which was shown in every part of his career, down to his decision of the last case he had anything to do with. I well remember that, at a bar dinner at the Vendome some years ago, in speaking of the times of Charles the Second, when so many cases turned on nice points of pleading, he said that those were the times when England dispensed logic and not justice to her suitors.

There was another thing that I found, shortly after entering

on the duties of my position. I found that Judge Lowell was a literary man. Having obtained all the facts of the case, he would throw his decision into a form that was unique. I never knew another judge who wrote such opinions as Judge Lowell did. He would take the whole case, and he would make it as interesting and as vivid as possible. He would give in it an account of the manner in which he had reached his decision, and you would have all the salient points brought out with a picturesqueness that made an impression. These opinions of his, as shown in his reports, differ markedly from any opinions that I have ever read, because of this power that he had to throw his decisions — the facts of the case and his reasons — into a literary form.

Among the salient points of his character — and I am speaking from personal experience — were his willingness and desire to help every one with whom he came into contact. I have many a time gone to his office to get assistance and advice from him, and never without an absolute certainty of meeting with the greatest consideration, kindness, and desire to assist me in any difficulty in which I might happen to be.

REMARKS OF HON. WILLIAM L. FOSTER.

The years of more than half a century have come and gone since my acquaintance with John Lowell commenced in the law school of Harvard University. We were members of a class among whom were many who, in after life, attained distinction and honor in public station.

"Once more reviewed in Fancy's magic glass,
I see in state the long procession pass";

and in that glass I recognize again the young and bright and active features and form of Rutherford B. Hayes, afterwards President of the United States; of Anson Burlingame, Minister Plenipotentiary to China; William L. Lee, Chief Justice of the Hawaiian Islands; of George P. Sanger and Stephen H. Phillips — all now departed — and of John A. Peters, the present Chief Justice of Maine.

The law school, which now has a roll of five hundred and seventy-five students, with eight professors and several other instructors, then numbered but one hundred and twenty-seven members, presided over by Joseph Story and Simon Greenleaf, long since departed, but now and ever, as then, held in reverent admiration. Of those one hundred and twenty-seven students scarce a score remains until this day. As for the rest —

"Their part in all the pomp that fills
The circuit of the summer hills,
Is that their graves are green."

The library of the school consisted of about six thousand books, among which were no more than thirty-six volumes of the United States Reports; forty-seven of the Massachusetts Reports, and ten volumes of the Reports of my own State. Its library now contains about thirty-nine thousand volumes.

“How strange the prospect to my sight appears,
Changed by the busy hands of fifty years.”

No qualification for admission to the school was required, but the applicant was expected to produce a certificate of good moral character; and no student was obliged to attend any lecture or examination, but any student was entitled to the degree of Bachelor of Laws after eighteen months' connection with the school.

Young Lowell, however, earned his diploma by constant, patient, and laborious study; and the bent of his inclination towards that branch of jurisprudence, in which he subsequently became pre-eminent, namely, maritime law, was indicated by his industrious perusal of Brown's Admiralty Law and Abbot on Shipping.

Our school days ended, the members of the class went their several ways, out into the scenes of active life and business — some to success, and some to failure — and my acquaintance with the quiet, modest, unostentatious student, John Lowell, was interrupted, only to be resumed after the lapse of forty years, when it became my privilege and good fortune, as a member of the bar, to meet him on the bench of the United States Circuit Court.

While not deficient in any branch of legal science, he was particularly learned and skilled in three specialties, — bankruptcy, admiralty, and patents, all these requiring much study and perhaps more observation; and the latter science embracing cases intricate in the extreme, requiring not only diligence and persistent study of mathematics and mechanics,

but also an acute perception of mechanical facts, and the application of sound common sense, which he possessed in the highest degree.

He was not only profoundly learned in the law; he was also cognizant of and interested in all the current events of social, business, and political life, and he was an industrious student of history, biography, and general literature.

He had few idle moments. When he travelled the circuit, he took with him, not law books, but the book of some favorite non-professional author.

I remember that on one occasion, while presiding in a jury trial in which I was engaged as counsel, a point of law came up for discussion, which seemed to be involved in considerable obscurity.

It being near the usual hour of adjournment, the judge said he would consider the matter during the recess. Shortly afterwards I had occasion to go to his rooms to furnish an authority. I expected to find him employed and perhaps perplexed with an examination of reported cases to which he had been referred, and I felt some hesitation about interrupting him. Venturing at last to do so, I found him comfortably engaged in reading McMaster's History, which had as much to do with the case in hand as the flowers that bloom in the spring.

Judge Lowell was always courteous, kind, patient, and forbearing towards the members of the bar. He had an acute and discriminating mind, but (in the words of another), "His keenness of perception was unaccompanied by any narrowness, as is frequently to be observed in a merely 'sharp' man. His intellect was rapid in its action, speedily penetrating to the vital point of the case in hand."

He had a keen and zealous sense of right and equity, so powerful and controlling as to lead him to disregard precedent and sometimes to bend, or even break, the long estab-

lished and wholesome rules of law; and in furtherance of the justice of the cause, he would not hesitate to express his opinion of a witness and of the merits of the case.

Justum ac tenacem propositi virum.

As an admiralty lawyer and judge, his fame extends beyond the seas; and it may be doubted whether any one has done more than he to give shape and definiteness to the law dealing with intricate cases growing out of commerce and navigation.

Judge Lowell's published reports are models of clear and concise English, remarkable for their brevity and their lucidity. There is a remarkable vigor of language, and not seldom a turn of expression, indicating a dry, original humor. For example, I accidentally ran across, the other day, in the case of "The Blackstone," Lowell's Decisions, 490, a collision case, this expression: "I would like to see the experiment tried by a steamer of moderating her speed in a fog; but I have hitherto found that their managers do not consider it important."

Another instance: upon the resignation of Judge Lowell, in 1884, the merchants of Boston held a reception and gave a dinner in his honor. Upon opening the exercises, the chairman began his address as follows: "Gentlemen of the Boston Merchants Association, we have met to-night to do honor to Judge Lowell, upon his retirement from the bench of the Circuit Court of the United States." (*Applause.*) Upon this Judge Lowell remarked, in an aside to Judge Devens, "They applaud because I have resigned."

A large portion of the two volumes of "Lowell's Decisions" is devoted to cases of mutinies, collisions, salvage, prizes, etc., with all of which the learned judge seemed to have been so familiar and sailor-like that it has been said, "They smell of the sea; you can almost smell the tar, almost hear the wind whistling through the rigging."

Few members of the bar so highly distinguished as that of Massachusetts, for its great and strong men, have been more highly respected, or so deeply revered and loved as John Lowell.

Outside the court room and in social conversation, he was a delightful companion. Retaining till the last his clearness of mind and cheerfulness of disposition, he might have said :

"I am not old — though time has set
His signet on my brow,
And some faint furrows there have met,
Care may not deepen now;
For in my heart a fountain flows,
And round it pleasant thoughts repose,
And sympathies and feelings high
Spring like the stars on evening sky."

In the early dawn of a bright May morning this noble soul, breaking loose from the environments of mortal life, took its flight to a loftier sphere. The golden bowl was broken, the silver cord was loosed, and o'er that soul's horizon broke the dawn of another life and the calm sunrise of eternity.

Henceforth the life departed is a precious memory, a lofty example, a perpetual inspiration.

"Nothing is here for tears . . .
No weakness, no contempt, dispraise, or blame,
Nothing but well and fair."

One of the lessons which such lives teach is the beauty of an upright and spotless character. Such examples tend to purify and ennoble the profession and the practice of the law; to adorn and sanctify the temples of justice. They compel reverence, while they invite emulation; and all of human society shares the greatness and honor of a great and honorable life.

Wherefore, my brethren, lift up your hearts, and let the spirit of heaviness put on the garment of praise.

REMARKS OF MR. LEWIS S. DABNEY.

My acquaintance with Judge Lowell began in the fall of 1861, now nearly thirty-six years ago. A very intimate friend of mine was a student in his office. I myself was then just beginning to study law, and making an occasional visit to my friend in his office, I got acquainted with the Judge. I began at once to come under the influence of those qualities and acquirements in him, which have compelled the admiration and won the affection of us all.

Besides the strong intellect, the wide learning, and the varied acquirements, which have won for other distinguished leaders of the bar our admiration and our confidence, and which he also possessed, he had in a singular degree a more uncommon gift, — the gift of winning affection. He never mounted guard over his own dignity, yet no one ever ventured to treat him with disrespect, or, indeed, ever was tempted to do so. Simple and unassuming in his manners, free from all affectations, he was always genial, kind, and cordial, ever ready when asked to give to younger men the benefit of his precious advice and suggestion.

When, four years later, I began to practise, he had gone upon the bench, and was already successfully encountering that supreme test of succeeding to a great man.

One of my earliest cases came before him in the district court. I had brought a libel in admiralty for wages for the seamen employed on board a sloop, engaged in carrying stone from Quincy to Charlestown, both in the State of

Massachusetts. The claimant objected to the jurisdiction that the whole service was between ports and on waters within the same State. The old controversy over the Twelfth Admiralty Rule had not then come to an end. The decisions of the Supreme Court were confusing and in conflict. Judge Lowell, in sustaining the jurisdiction, anticipated the Supreme Court in the conclusion, which it finally reached in the *Lottawanna*.

While possessed of wide learning in the common law, his sympathy and his supreme excellence were in equity and in its kindred subjects, bankruptcy and admiralty. Of the many admirable qualities of his intellect there are two, which have always particularly impressed me, and of which I wish to speak.

The first was his wonderful quickness and acuteness of perception. In this, it seems to me, I have known but few who approached him. I remember once trying a case before him, in which I was defending a steamer against a charge of going at excessive speed, a subject on which some of his remarks have already been mentioned this morning. I was much embarrassed by the question whether I should put my engineer on the stand. On the one hand, if asked, he would have to give evidence in regard to the movement of the engines, which would be damaging on the question of speed. On the other hand, not to call him would be to lay my case open to comment of a highly injurious character. I decided to put him on and take the chance that the dangerous question would not be asked. I did so, and it was not asked. In his closing argument my adversary was commenting on the absence of evidence upon the subject of the movement of the engines, and I interrupted him with the suggestion, "My engineer was on the stand; why did n't you ask him about it?" He had no answer, but Judge Lowell instantly flashed out on me, "Mr. Dabney, you did not open that sub-

ject with your engineer in chief, and under the rule in this court he could not be cross-examined on it."

The other trait, which impressed me, was the determination, which Judge Lowell always showed, to allow no rules of law to stand in the way of reaching the decision, which he conceived would do real justice between the parties; and his acuteness, of which I have already spoken, almost always showed him the way to do it. When he had to yield to legal principles which he conceived prevented what seemed to him justice, it was ever with extreme reluctance, which he took pains not to conceal. One never felt safe before him entrenched behind what seemed the most insuperable legal barriers, for the ingenuity with which he contrived to get round them was marvellous. It was this quality of mind which gave him eminence in the various branches of equity rather than in the common law.

And now the familiar presence, the cordial hand and smile, the quiet wit which made his conversation so interesting and attractive, and the kindly eye and manner which made it impossible to us not to love him, are gone from us. But we have the remembrance of them to cherish while memory is left to us, and we have his example to try to follow.

REMARKS OF MR. ARNOLD GREEN.

It would be presumptuous for one who practises law at a bar outside the State of Massachusetts to attempt further description of the character and personality of Judge Lowell, or to attempt further analysis of his characteristic qualities, since that analysis has already been made, and has ended, as it must have ended, with praise. To those of our profession who have spent years in it, I do not think that mere professional success and mere intellectual strength seem things which either command respect or win love. With these must be something more, a symmetrical union of traits, each admirable, and none too common, which in their combination enable a man to take up the tangled skein of human conflict, made more troubled, as it usually is, by the troublesome temper that confuses it, and in it to find those clews which enable the practitioner to decide with honesty and with justice. Because Lowell combined these qualities, we who pleaded before him learned to look up to him and to love him; because he possessed them, —

*"Fairer seems your ancient city, and its sunshine seems more fair
That he once has trod its pavement, that he once has breathed its air."*

The great masters of our craft, the Papinians, the Cujaxs, and the Marshalls, loom up in its history at intervals of long generations. But between them and around them are those other men whose influence, I sometimes think, is not less strong, and to most of us even more inspiring than that of the august masters of our guild, men who did their life's legal

work with directness and with honesty, with calmness and with truth. And we loved Lowell and honor him because he was one of these. Personally, professionally, officially, he ever

"Fluctibus e tantis, vitam, tantisque tenebris
In tam tranquillo, et tam clara luce locavit."

REMARKS OF HON. JOSEPH W. SYMONDS.

It was with deep sensibility, with sincere and profound regret, that the Bar of Maine heard of Judge Lowell's death. The close of a career so distinguished for private virtue and for public service suddenly over-shadowed all minds as with the darkness of a personal sorrow, with a painful sense of the general, the public, the universal, loss. Kindred and friends might draw near, oppressed by heavier grief, but outside the sacred circle of his own mind and heart, at farther distance but in the silence of a rapt and sensitive sympathy, there stood the larger group, the bar, the court, society, all keenly appreciating the fact that one had fallen who had served them well, whom they needed and whom they loved.

In approaching his grave, in joining with the other districts of the circuit to pay the homage of admiration and respect to his memory, it would have suited us well to take our place in silence before the Court, joining only by our presence and interest in the solemnities of the occasion, in the proceedings of the Suffolk Bar, longer and more closely associated with him than we, and listening to the words of the Court of which he was so honored a member. But whatever may be the part assigned to us, we readily assume it, asking only that it may be among those who are most reverent and most sad.

The visits of Massachusetts judges, I need not say, have been familiar to Maine from an early period of her history. Omitting all reference to the earlier period of rather irregular and uncertain political relations, at least from the charter of

William and Mary, Massachusetts judges were accustomed to ride the circuit in Maine as our representatives attended the General Court in Boston. The Governor of Massachusetts, announcing in his message in March, 1821, the separation of Maine and its organization into an independent State, refers to Maine as having been part of the Commonwealth, "bone of our bone and flesh of our flesh," from the time of the William and Mary charter. All the then existing counties of Maine during the period of the first sixteen volumes of the Massachusetts reports find their own adjudicated cases therein.

In March, 1821, the separation was complete, but within about two months, in May of the same year, under the then recent act of Congress, Judge Story was present in Portland, and held the first term of the United States Circuit Court in Maine as one of the new federal districts; and from 1821 to 1845, nearly a quarter of a century, he seldom failed to be present at the two annual terms of that court in Maine, one in Wiscasset and one in Portland.

In describing the Roman forum, Hawthorne writes that it may not be well for him, if he would excite interest in the personages of his story, to suggest that Cicero's foot may have stepped on yonder stone, or that Horace may have strolled near by, making his footsteps chime with the measure of the ode that was ringing in his mind. "The very ghosts of that massive and stately epoch have so much density that the actual people of to-day seem the thinner of the two, and stand more ghost-like by the arches and columns, letting the rich sculpture be discerned through their ill-compacted substance."

In somewhat the same vein, we may recall the fact that Webster, at the close of a session in which his fervor and reason had thrilled the Court, sometimes walked arm in arm with Judge Story from the court house to their inn, — the

marshal, wearing the sword, accompanying the judge; or that other interesting episode of our history, when the expiring eloquence of Choate, in defiance of bodily infirmity and malady, blazed with almost unaccustomed light in defence of the purity, dignity, and honor of the judiciary of Maine.

In May, 1845, Judge Story held his last term in Portland. Before the October term of that year the great jurist was no more. I need not say that Maine treasures every association which links his lofty fame with her soil and history. Every spot that he visited is sacred still to his memory.

The October Term, 1845, opened with the reading of the commission to his successor, the distinguished Judge Woodbury, of New Hampshire. An elaborate memorial of Judge Story, prepared by one of his most intimate friends, Charles Stewart Daveis, of Portland, and bearing the signature of Stephen Longfellow as president of the bar, was presented and entered of record.

The accession of Judge Woodbury to the Bench must have seemed to his contemporaries, I imagine, like the retirement of a great statesman from the fields in which he had rendered long and high service and had won great distinction, but his few years upon the bench gave him permanent judicial fame. This brief reference to Massachusetts justices in Maine touches only slightly and incidentally upon his career. He died at Portsmouth, N. H., September 4, 1851.

At the September Term, 1852, Judge Curtis was present for the first time, and he continued to hold term at Portland once, and often twice, a year, until the April Term, 1857. His resignation, which was so much regretted, soon followed. I do not know who can claim, in comparison with him, the fame of greater distinction in both fields, upon the bench and at the bar. Judge Lowell was like him in this, in rendering great service both as lawyer and as judge.

Judge Clifford succeeding Judge Curtis, I remember no

other reference for me to make, among those who are no longer living, to Massachusetts justices of the United States Supreme Court, who have held term in Maine, but it may not be improper on this occasion for me to recall the fact, which we like to remember, that, notwithstanding the change in the system of the courts, the present justice of the Supreme Court, during his incumbency of office, has continued the golden chain of this succession by being present at many circuit terms in Portland.

After Judge Curtis, Judge Lowell was the next Massachusetts judge to visit Maine. He came as the successor of the first circuit judge under the new system, Judge Shepley, a man greatly admired and loved, and whose early death was deeply lamented in Maine.

It was true from the first, not only that all who met Judge Lowell respected him as a judge, but that they were fond of him personally. He was a favorite with them all; with his associates upon the federal bench in Maine, Judge Fox and afterwards Judge Webb, with the bar, and with all the members of the community who were fortunate enough to be thrown into personal relations with him.

The loftiness and purity of his own motives and aims gave him a singular transparency and openness of demeanor. There was the charm of great attainment in all he did and said, the rich result of perfect methods of discipline patiently pursued, and of a very wide and various experience; and there was no affectation to mar the charm. A noble simplicity of life, a courtly simplicity of manner, a rare refinement, and, at the same time, an overflowing wealth of resource, an exquisiteness of courtesy—the most exquisite of all courtesy, that which comes from the heart—all these were with him personal traits which attracted the attention and won the regard of friend or stranger, but at the same time I suppose they were only new blossomings upon ancestral soil.

He had inherited a noble past. Its traditions alone were lofty ideals, and he was true to the past, as he was to the native strength and stateliness of his own nature. What deep root in our law must the learning have taken which flowered so beautifully, and in so many and so various fields! Under what favoring skies and auspices, what propitious influences of birth and ancestry, what long and noble training, must the delicate judgment have been disciplined, which, through all the range of commercial law upon the land and upon the sea, quivered so sensitively to meet the changeful issues, the shifting phases, of doubtful and disputed facts in contested cases, and which at the same time was so true to the steady poles!

As to the permanency of his fame, we may safely leave it with the words of Webster:

“Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures or contributes to raise its august dome still higher in the skies, connects himself, in name and fame and character, with that which is and must be as durable as the frame of human society.”

REMARKS OF MR. CHARLES P. GREENOUGH.

I am grateful to the committee, Mr. Chairman, for asking me to speak to-day upon the relations of Judge Lowell to the younger members of the bar, for I am one of the many who owe him a debt of gratitude.

It is difficult to find the proper words with which to describe the kindness and consideration with which Judge Lowell on the bench treated the members of the bar, and it is still more difficult to find words with which to express the kind courtesy, tact, unfailing patience and consideration with which he treated the younger members of the bar.

It has been said that the highest compliment a man can pay to a woman is to argue with her as if she were a man, and so it might be said that the ideal treatment by a judge of the younger members of the bar is to treat them as if they were old members of the bar.

This method Judge Lowell practised to perfection. As an instance, I remember very well that one of the first cases I argued after my admission to the bar was a libel for demurrage before Judge Lowell in the United States District Court. I remember distinctly that he apparently listened to the crude arguments I presented to him, with the same patience and interest, and gave them the same consideration that he gave the arguments of my opponent, who was one of the seniors at the bar. I remember also that I did not at the time appreciate the kindness and consideration of his treatment, because I was under the delusion, which was soon after rudely dis-

pelled, that all judges treated all lawyers in that manner. And I have no doubt that my experience was that of every other young lawyer who practised before him.

After his retirement from the bench his relations with the younger members of the bar became more intimate and more delightful. He was always ready and apparently glad to assist them in any way in his power. I can only remember one other member of the bar, since I began to practise, who had the same happy faculty of being able to give aid and assistance to younger members of the bar, without at the same time making them feel that they were asking and receiving a favor; and that was the late William G. Russell. Judge Lowell, from a lasting youthfulness of mind, perhaps, was apparently as much interested in any new or difficult problem which was propounded to him by some puzzled junior as that junior was himself; and I know by experience, that after a prolonged discussion on some question of law, Judge Lowell's manner was such that I carried away from his office, at least as far as his front steps, the impression that Judge Lowell was obliged to me for giving him an exceedingly interesting problem to decide. But, Mr. Chairman, I became fully aware of the fact before I reached my own office, that an exceedingly busy, very able, very cordial, and courtly gentleman had freely given me half an hour of his valuable time, and his best thought, and had by his own special charm of manner relieved me from any burdensome feeling of obligation. This naturally only added to my love, affection, and respect for him.

REMARKS OF MR. FREDERICK P. FISH.

I can add nothing to what has been said of Judge Lowell as a lawyer and a judge. His character was so marked and so straightforward and simple that it impressed us all exactly alike.

Much as we respected the learning of Judge Lowell and the intellectual power, so essential to the eminent judge, which he possessed in a marked degree, the feeling of affection and regard that we have for him and for his memory is more than that which is accorded to learning and ability. It is a tribute to his character, his personality, his moral worth and his purely human qualities, all of which were so conspicuous in every stage of his career. As a judge, his instinctive sense of right and wrong, his love for the one and hatred of the other, his sympathy, his simplicity, his charity, his kindliness, his anxiety to do right, and so to find the facts and interpret the law as to enable him to do right, influenced his every act and his every thought. Not only did he have the power to apprehend the facts in a case, but what was even more important, his strong common sense and knowledge of human nature enabled him to see those facts in their true relations. He knew the law, he revered its principles and respected its precedents, and could apply it accurately and firmly; but he always recognized the fact that the law is, after all, but an imperfect expression of certain fundamental principles, moral and ethical, and based upon the experience of the human race, and that to secure justice, in view of the infinite variety of unprecedented conditions that come before the courts, it is necessary

that the rules of law should be applied in the light of those fundamental and underlying principles. For that reason, the development of the law, which is constantly going on, was perfectly safe in his hands.

The same qualities characterized him as a lawyer. Who among us ever found him otherwise than admirable and delightful in his professional work? Loyal to his clients, fair to his adversaries, faithful to his obligations to the court, always courteous and friendly, he endeared himself to all with whom he came in contact, and in particular to those of his own profession; and while we rendered homage to him as an eminent lawyer and a leader among us, he had a hold upon our affections as a man, that would have been impossible had he been merely a great lawyer or a great judge. We shall not forget him, and his memory will always be pleasant in our minds.

President CAUSTEN BROWNE here moved the adoption of the resolutions, the motion was seconded, and the resolutions thereupon were adopted.

Brother Greenough moved that the resolutions as adopted be submitted to the Court, and this motion was seconded and carried.

The bar meeting being over, the Court was announced, and the six judges in attendance then came in and took their seats on the bench: Justice Gray of the United States Supreme Court (presiding), Judge Colt and Judge Putnam, Circuit Judges; Judge Webb, of the Maine District; Judge Aldrich, of the New Hampshire District, and Judge Brown, of the Rhode Island District.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

MAY TERM, 1897, to wit, June 19, 1897.

PRESENT :

HON. HORACE GRAY, JUSTICE OF THE SUPREME COURT ;

HON. LEBARON B. COLT, CIRCUIT JUDGE ;

HON. WILLIAM L. PUTNAM, CIRCUIT JUDGE ;

HON. NATHAN WEBB, DISTRICT JUDGE FOR THE DISTRICT OF
MAINE ;

HON. EDGAR ALDRICH, DISTRICT JUDGE FOR THE DISTRICT OF
NEW HAMPSHIRE ;

HON. ARTHUR L. BROWN, DISTRICT JUDGE FOR THE DISTRICT
OF RHODE ISLAND.*

Mr. BOYD B. JONES, United States Attorney, read and presented the resolutions of the Bar, and addressed the Court as follows :

May it please your Honors : On the fourteenth day of last May there passed from this life, in his seventy-third year, the Hon. John Lowell, for fifty-one years a member of the bar, for thirteen years a judge of the District Court of the United States for Massachusetts, and for six years a judge of the United States Circuit Court.

To-day the members of the bar who knew and loved and honored him have gathered here to express, so far as it is in their power to do so, their appreciation of his attainments as

* Hon. THOMAS L. NELSON, District Judge for the District of Massachusetts, was absent by reason of illness.

a lawyer, his qualities as a magistrate, and his virtues as a man.

It is seldom that a career so long and so responsible, discloses so much to admire and so little to criticise. Rarely, indeed, does a life exceeding the scriptural allotment of years retain to its very close its active usefulness and goodness in such attractive vigor and with such increasing honor.

We do well, may it please your Honors, to pause in our absorbing activities and inscribe upon the records of this Court an enduring memorial to our departed brother.

Judge Lowell was born in Boston on the eighteenth day of November, 1824. His ancestry was such as to inspire a generous mind with noble emulation. His earliest American ancestor was Percival Lowell, who came from Bristol, England, and settled in Newbury, Essex County, in 1639.

The first John Lowell was the first minister of Newburyport at a time when ministers guided, if they did not control, the sentiment of the communities in which they were settled. He died in 1767.

His son, the second John Lowell, was the great-grandfather of Judge Lowell. He died at Roxbury in 1802, in his fifty-ninth year. He was an eminent lawyer and a man of great ability and influence. He represented Newburyport in the Provincial Assembly in 1776, and was elected a member of the Continental Congress in 1781. He was a member of the committee which drafted and reported the constitution for this Commonwealth. The clause in the bill of rights, declaring that "all men are born free and equal," was inserted by him for the purpose, which it accomplished, of abolishing slavery in Massachusetts. In 1789 he was appointed judge of the United States District Court for Massachusetts. He held this office until 1801, when he was appointed chief judge of the United States Circuit Court for the first circuit. He held many other responsible offices.

He was one of the strong men in his generation, and made his mental mark upon the body politic.

His son, the third John Lowell, was also a man of great ability and distinction. He was born in Newburyport in 1769, and was admitted to the bar before he was twenty years old, and at the age of thirty-five had attained high repute as a lawyer. He then devoted himself to science, literature, and affairs of public interest. He was an able and vigorous writer and gave great attention to political questions. It is said of him that few men of his day had so strong an influence on public opinion in Massachusetts. He died in Boston, in 1840.

Judge Lowell's father, John Amory Lowell, was a successful and prominent Boston merchant, who possessed the scholarly qualities of the family. His mother, Susan Cabot Lowell, was the daughter of Francis Cabot Lowell, who prepared the plans from which the city of Lowell was developed and for whom it was named.

Judge Lowell was fortunate alike in environment and heredity. His education was thorough and complete, and he fitted for the legal profession at an age when the faculties acquire an aptitude for legal work which later preparation seldom gives. He was graduated at Harvard College in 1843, at Harvard Law School in 1845, and was admitted to the bar in Suffolk County in 1846. He practised law in Boston until March, 1865, when he was appointed Judge of the District Court of the United States for Massachusetts. He held this office until 1878, when he was appointed a Judge of the United States Circuit Court. This latter office he resigned in 1884, and from that time until his death he practised law in Boston, having associated with him his son, John Lowell, Jr. His thorough knowledge of legal principles, his power of readily applying them to complicated cases, his good sense and sound judgment, made him an admirable

lawyer. He was devoted to his clients, and the largest interests were safely entrusted to his care. Like many of our most eminent jurists, he did not incline to the trial of jury causes. But the reputation of a lawyer is as fleeting as his breath, while a judge's fame is known to the bench and bar for successive generations. As a judge, John Lowell attained honorable distinction. He was a jurist with a strong love of justice and a keen perception of right and wrong. He was familiar with the cases, but did not allow a precedent to obscure a principle. He attached due importance to rules, but did not sacrifice their spirit to their letter. He was wise as well as learned. He had a gentle dignity and quiet firmness, and was always kind and considerate. His opinions were clear and logical and supported by a discriminating citation of authorities and by strong reasoning. Judge Lowell's administration of the bankruptcy laws contributed more than anything else to his judicial reputation. He made them a subject of exhaustive examination and careful study, and his decisions were regarded with the highest respect by the courts. It is safe to say that in this branch of the law the bench and bar considered him unsurpassed. When he retired from the bench his services were constantly required as referee and auditor in cases of magnitude; and other lawyers frequently retained him for the argument of important law cases. This was of common occurrence in cases involving the construction and constitutionality of the insolvency laws of our Commonwealth. In religious belief he was a Unitarian. He was a public-spirited citizen, a charming acquaintance, a loyal friend, and a devoted husband and father.

The members of the bar, with admiration for his life and in grief for his death, ask that the resolutions which I have read may be extended upon the records of the Court.

Mr. CAUSTEN BROWNE then addressed the Court as follows :

May it please the Court: The Bar have entrusted to me the duty of supporting the District Attorney's request that you will receive their resolutions and order them to be recorded.

The meeting which adopted these resolutions was a meeting of the Bar of the First Circuit. Brethren from the Districts of Maine, of New Hampshire, and of Rhode Island have joined with us of Massachusetts, and we now ask the Court to join with us all, in doing honor to the memory of a man who, by his life on the bench and at the bar, did honor to our profession; who left it richer for having held him within its ranks; richer not only by his contributions to its learning and its dignity and its title to public respect, but by the influences of his rare professional and private character.

The Bar are of the opinion that the professional ability and accomplishments of Judge Lowell and the excellence of his private life were such as eminently to deserve that solemn recognition of record which they now ask the Court to order.

The resolutions, prepared by Brother Lothrop, his lifelong friend, embody a just and appreciative account of his qualities and accomplishments, and as such have been accepted by the Bar with the most cordial approval. They leave nothing unsaid that needs to be said, but in discharging my present duty I claim the privilege of adding a few words to express my own personal thought and feeling in regard to the man whom we all so admired and trusted and loved.

As a judge he was learned, able, upright, and humane. I should say that the results of his study took shape chiefly in the clear and orderly apprehension and statement of principles. He cited few cases in his opinions, but his opinions

showed upon their face that they were the result of diligent, thoughtful, and candid study of the cases. They were such as only a deep student of the law would be apt to produce. They gave you the impression of a man who had acquainted himself with all that was worth knowing of the subject in hand, and more than he thought it worth while to repeat.

His intellectual ability as a judge was of a rare and fine type. Together with extraordinary quickness of apprehension and keenness of analysis and discrimination, and with the power of going straight as gravitation to the centre of controversy, he had sound judgment, the finest of common sense. To this all the movements of his mind were subordinated. Every proposition was tried at last for its practical working value. It was this great quality of sound judgment, born of a good understanding and a wide knowledge of men and affairs, that won for him the highest esteem among laymen as well as among lawyers. We find it reflected in his published opinions, which are remarkable examples of clear and sensible thinking, expressed in a style of rare purity, simplicity, and vigor.

It is our happiness to practise our profession in courts where the uprightness of the judge is never conceived as a subject of question. And therefore to say, in the general way, that Judge Lowell was an upright judge would be to say nothing worth while. But it is worth while to note that he was a man of very strong prejudices, of very strong likes and dislikes, so much so that he needed, and was conscious that he needed, to be on his guard, lest they should in some way or to some extent affect his judicial action. And he was so on his guard; and I believe we all agree that he was successful in holding his judicial action, in small matters as well as great ones, absolutely above and beyond the reach of any personal prejudice or bias whatever.

The good chancellor, Sir Thomas More, thought it worth

while to say of himself: "So far as honesty and justice are concerned, if mine own father, whom I reverence dearly, stood before me on the one hand, and the devil, whom I hate extremely, on the other, yet, the cause of the latter being just, I should give the devil his due." Times and manners change but types remain. Judge Lowell, in the matter of uprightness, was of the type of Sir Thomas More.

When I say that he was a humane judge, of course I do not use the word in the narrow sense of compassionate, but broadly, as meaning in sympathy with men. His shrewd, practical wisdom enabled him to understand human nature, and his kindliness of disposition and (I may add) his sense of humor inclined him to make allowance for it. He seemed to have a genuinely human appreciation of the practical situations and emergencies of life. He would not, unless the law and the evidence compelled him, do what he thought was a practical injustice. And it seldom happened that he found himself so compelled. He had a marvellous talent for escaping from that difficulty.

When he came down from the bench, not only did he enjoy an excellent practice, chiefly as consulting counsel, but he did not quite cease to be a judge. The same qualities which had so commanded the respect and confidence of the bar and the public, while he was on the bench, drew to him employment as referee and arbitrator, in preference, it may be fairly said, to any other man at the bar. This was a dignified service, congenial with his tastes and habits, becoming his age and reputation, and bearing with it a certain afterglow of the judicial life which suited well the closing years of his most honorable career.

And so he lived on among us, admired and trusted and loved by us all to the end.

Let me now try to recall some of those personal traits of character which I think are most in the minds of his brethren

and friends to-day, and by which we shall most surely remember him.

First of all he was a *true* man, — true as steel. He never flinched from a friend or a duty. His moral courage was dauntless. His loyalty was absolute. Said Lord Melbourne, "Any man can stand by his friends when they are right. Give me a man that stands by them whether they are right or wrong." Such a man was John Lowell. He stood by his friends because they were his friends. He left the question whether they were right or not to be discussed by others.

He was a peaceable man. That was the result partly of his sweet temper and partly of his excellent good sense which readily told him what controversies were not worth while. I do not think that any offence against himself really roused his *wrath*, unless it might be such as involved an impeachment of his honor. I never saw him angry on the bench but once, and that was when a young member of another bar, trying a case here before him, forgot himself so far as to intimate that the judge was not impartial. The lightning in the judge's eyes was a sight to remember. But he said not a word. He controlled himself instantly and perfectly. It could not possibly make any difference what that young person thought about such a matter.

He was a frank and sincere man. He hated all and all manner of affectation, pretence, and sham, and exposed it without mercy. He hated even more any crooked dealing, and never forgave it or forgot it.

He was simple in his tastes and his habits and disliked ostentation and needless formality.

He was a delightful companion, witty with what the resolutions call a keen but always kindly wit, a good listener, and a better talker, modest and courteous, genial and unselfish.

He was a kind-hearted man; the poor and the humble and the distressed found always a friend in him. Some one has

recently said of him that he was a "walking benediction". What eulogy can be finer, what better worth living to deserve, than that?

I have endeavored to set before the court some of those qualities of Judge Lowell, manifested in his office as judge, in his relations with his brethren of the bar, and in his private life, which seem to me to have been most distinctly characteristic and likely to be so regarded by those for whom I speak.

On behalf of the Bar, I now join with the District Attorney in asking you to receive the resolutions and order them to be recorded, so that long after we, his brethren and friends, have passed away, a worthy memorial of him may be preserved among men.

Mr. JUSTICE GRAY responded as follows:

Brethren of the Bar: It is peculiarly gratifying to me to be enabled to express, in behalf of the Court, its hearty concurrence in your resolutions commemorative of the late Judge Lowell.

He and I were intimate friends for more than half a century. On leaving the Harvard Law School, I became a student in his office. In our early days at the bar we were constant companions, in our walks and in our studies. Our first judicial appointments were within a year of one another. We received honorary degrees from our university on the same day. And we were colleagues upon this bench during the last years of his judicial service.

You will forgive me, therefore, for indulging in reminiscences of a few incidents of his career, which may not be generally known, or may have passed out of mind, and which testify to the high esteem in which

he has long been held by those most competent to judge.

When just thirty years old, and while he was arguing, before the full bench of the Supreme Judicial Court of Massachusetts, the important case of *Lee v. Boston*, reported in 2 Gray, 484, Mr. Justice Bigelow (afterwards Chief Justice) wrote upon a slip of paper, and passed down to the reporter of the court, these words: "Lowell is arguing this case with great clearness and ability. He only lacks zeal and elocution to make him professionally very eminent."

True it was, then and always, that, devoted to the cause of his client, but satisfied with thoroughly understanding and strongly and clearly reasoning out his case, outward demonstrations of zeal, or graces of elocution, were weapons which he had not proved, and which he was not in the habit of using. Rather might it be said of him:

"Whose armour is his honest thought,
And simple truth his utmost skill."

Ten years later, at the age of forty, his progress at the bar was interrupted by his being appointed District Judge of the United States for this District, under circumstances most flattering to him. Immediately upon the resignation of Judge Sprague, and there is reason to believe with his countenance, a request for Mr. Lowell's appointment in his stead was spontaneously drawn up and signed by half a dozen leading members of the Bar, and taken by Mr. Dana in person to Washington, and the appointment earnestly urged

by him and by Mr. Sumner, and promptly made by President Lincoln and confirmed by the Senate.

Just before his promotion to the office of Circuit Judge, the general opinion entertained by the Bar of his fitness for any judicial position was aptly expressed in the saying of one of its leaders, I believe Mr. William G. Russell, that Judge Lowell had a remarkable instinct for perceiving on which side lay the real justice of any case, and an equally remarkable ingenuity in showing that a decision in favor of that side was in accordance with the settled rules of law.

His eminent judicial qualities and his attractive personal traits have been so fully and felicitously portrayed in the resolutions and addresses of the Bar as to leave little to be added.

He had an exact and comprehensive knowledge of the principles of common law, equity, and admiralty, not merely as distinct systems, but as parts of one harmonious whole. When he came to administer as a judge those branches of the law with which his practice at the bar had not made him familiar, he showed a peculiar faculty in bringing to light the spirit underlying and vivifying the letter of legislative acts; and his opinions in patent cases were expressed in precise and appropriate language, intelligible and convincing to the general reader, as well as to experts in the art or science in question.

But it was in exercising jurisdiction in admiralty and in bankruptcy, where the application of equitable principles and the granting of appropriate relief are least fettered by technical rules, that his judicial genius

found its most perfect development. The two volumes of reports published by him are worthy to be ranked with those containing the judgments of Story and of Sprague; and it would be a great boon to the profession if the series could be completed by gathering together his opinions remaining in manuscript or scattered through divers books.

He was in many respects an ideal judge. Quick in perception, cautious in conclusions, thoughtful, studious, wise, independent to the verge of wilfulness in establishing justice, impatient only of fallacies or of unfairness, and considerate of the interests and the feelings of all who appeared before him as litigants or as counsel.

The sprightly wit and delicate humor, which made him so delightful a companion, would sometimes break out in his judicial opinions, like ripples on the current of his thought.

One word more, without which any memorial of him would be incomplete. No member of the profession was more warmly and universally beloved by his brethren of the Court and of the Bar than John Lowell.

In accordance with the request of the Bar, it is ordered that the resolutions, together with a memorandum of these proceedings, be entered upon the records of the Court.





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